



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THE ALS ASSOCIATION
ARIZONA CHAPTER,

THE ALS ASSOCIATION,
GOLDEN WEST CHAPTER,
INC.,

THE ALS ASSOCIATION,
ORANGE COUNTY
CHAPTER, INC.,

THE ALS ASSOCIATION
ROCKY MOUNTAIN
CHAPTER,

ALS ASSOCIATION,
CONNECTICUT CHAPTER,
INC.,

ALS ASSOCIATION OF
GEORGIA, INC.,

THE ALS ASSOCIATION
GREATER CHICAGO
CHAPTER,

ALS OF NEVADA,

THE ALS ASSOCIATION
NEW MEXICO CHAPTER,

THE GREATER NEW YORK
CITY CHAPTER OF THE
ALS ASSOCIATION INC.,

THE ALS ASSOCIATION
NORTH CAROLINA
CHAPTER,

C.A. No. 2023-0054-JTL

**PUBLIC VERSION FILED -
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THE ALS ASSOCIATION
CENTRAL & SOUTHERN
OHIO CHAPTER, INC.,

THE ALS ASSOCIATION
CHAPTER OF OREGON AND
SOUTHWEST
WASHINGTON,

GREATER PHILADELPHIA
CHAPTER, THE
AMYOTROPHIC LATERAL
SCLEROSIS ASSOCIATION,

Plaintiffs,

v.

THE AMYOTROPHIC
LATERAL SCLEROSIS
ASSOCIATION,

Defendant.

VERIFIED COMPLAINT

Plaintiffs The ALS Association Arizona Chapter; The ALS Association, Golden West Chapter, Inc.; The ALS Association, Orange County Chapter, Inc.; The ALS Association Rocky Mountain Chapter; ALS Association, Connecticut Chapter, Inc.; ALS Association of Georgia, Inc.; The ALS Association Greater Chicago Chapter; ALS of Nevada; The ALS Association New Mexico Chapter; The Greater New York City Chapter of The ALS Association Inc.; The ALS Association North

Carolina Chapter; The ALS Association Central & Southern Ohio Chapter, Inc.; The ALS Association Chapter of Oregon and Southwest Washington; and Greater Philadelphia Chapter, The Amyotrophic Lateral Sclerosis Association (collectively, the “Chapters”), for their Complaint against Defendant The Amyotrophic Lateral Sclerosis Association (“National”), hereby allege as follows, upon knowledge as to themselves and their own actions, and upon information and belief as to all other matters:

I. INTRODUCTION

1. This action is rooted in National’s catastrophic leadership failures and its unflinching fixation on seizing complete control over the Chapters. Notwithstanding the Chapters’ exhaustive efforts to resolve their differences with National, they are impelled to file suit to protect their mission of caring for people and their families living with amyotrophic lateral sclerosis (“ALS”).

2. Known colloquially as Lou Gehrig’s disease, ALS is a rapidly developing, neurodegenerative syndrome affecting nerve cells in the brain and spinal cord, and causing loss of muscle control. With voluntary muscle action progressively impaired, people with ALS lose the ability to speak, eat, move, and eventually breathe. ALS is always fatal, usually within two to five years of diagnosis.

3. During that time, skilled nursing, mobility assistance, medication,

physical therapy, nutrition support, and ventilation are required, and can prolong an ALS patient’s life by many months, or even years. More importantly, the right care makes an immeasurable difference in the quality, comfort, and independence of both the ALS patient and their family. Providing and connecting people with that necessary ALS-specific care is at the absolute heart of the mission of the Chapters.

4. National is a Delaware nonprofit, nonstock member corporation. Section 4.1 of National’s bylaws identifies the “Members” of National for nonprofit law purposes as “chartered chapters.”¹ The Chapters are each chartered chapters by virtue of Chapter Charter Agreements (“CCAs”) they entered into with National, described in more detail below.

5. As noted, each of the Chapters has a well-defined geographic territory and is itself an independent nonprofit corporation. Each has a governing board, and is responsible for generating its own revenue, hiring its own staff, establishing its own community partnerships, entering into its own contracts, and administering its own direct care programs based on the particular size and needs of its local ALS population.

6. As a complement to its contractually affiliated chapters, National is a

¹ At times, the Chapters will refer to National in combination with the chapters as “The ALS Association.”

federated organization headquartered in Arlington, Virginia, that focuses on investing in research to find new treatments and, hopefully, a cure for ALS.

7. In line with its federated model and pursuant to a mostly uniform CCA, National receives a portion of the revenue—currently, 13.6 percent—raised by these Chapters, to invest in research, clinic certification, related lobbying efforts, and to handle “national” operations.

8. National, apparently no longer satisfied with 13.6 percent, unilaterally decided to abolish The ALS Association’s federated structure, eliminate the independent corporate existence of the Chapters, and centralize control “inside the Beltway.”

9. The decision to de-federate—or require “merger” of the Chapters into National—was formalized in a fiercely contested vote of National’s Board of Trustees (“BOT”) on July 9, 2021 (“July 9 Vote”).

10. Before the July 9 Vote, the BOT failed to take even rudimentary steps to satisfy its fiduciary and contractual duties. The BOT majority voted to de-federate with no financial analysis, no clear plan of transition for how the de-federated organization would operate, and little if any legal analysis. Indeed, National’s handpicked consultant, hired to develop the case and architecture for de-federation, admitted that National would be “building the plane while flying it.”

11. Contemporaneous surveys of representatives on National's Board of Representatives ("BOR")² and chapter executives showed overwhelming majorities against de-federation, a small minority unsure, and not a single vote in either survey for de-federation.

12. The BOT voted without consideration for the chapters' independent corporate status, and without recognition that it lacks the power to vote the chapters out of existence. The boards of the Chapters, however, respecting their fiduciary obligations, did not agree to turn in their charters and merge into National.

13. So, National launched a campaign to force the Chapters into self-liquidation, including by directly competing for donations within Chapter territories, poaching key Chapter staff, and illegally suspending representatives of the Chapters from the key governing bodies.

14. That these tactics constitute material breaches of National's contractual relationships does not faze National, which has expressly repudiated the CCAs. To cite just one example, National's Chief Operations Officer, Tina Zeff, made it clear that "if a chapter doesn't [choose to] unify, the charter will be terminated and all assets, reserves and services to provide our mission transfer to [National]."

15. Ms. Zeff reaffirmed her statement, echoed by National's leadership,

² The role and purpose of the BOR is discussed in Paragraphs 77-83 below.

when on January 11, 2023, she told the Chapters unless they submit to de-federation within 30 days, National will “commence the process of terminating the non-consenting Chapter’s membership in the ALS Association, and revoking the non-consenting Chapter’s Charter Agreement”, which entails, in addition to disaffiliation, transfer of Chapter assets to National.

16. Before and since the July 9 Vote, National has repeatedly demonstrated it has little knowledge of what the Chapters actually do, and historically has not shown great interest in the crucial hands-on care services the Chapters provide to thousands of ALS patients and their families across the country. Under National’s vision of a merged organization, without understanding the unique nature of each community, the National office will provide one-size-fits-all care services, redistributing resources from the Chapters, resulting in the lowest-common-denominator level of care within a budget, and programs set at National’s unilateral discretion.

17. Ceding control of the Chapters’ fundraising and provision of care services would be disastrous for the patients and families the Chapters’ serve. The Chapters’ leadership, mindful of their organizations’ mission and their fiduciary duties to protect it, *cannot* allow this to happen.

18. The Chapters bring this action to protect their right and ability to

execute on their mission—serving patients and families living with ALS.

II. PARTIES

19. Plaintiff The ALS Association Arizona Chapter (the “Arizona Chapter”) is a nonprofit corporation organized under the laws of Arizona. The Arizona Chapter is a chartered chapter and member of The ALS Association. Its exclusive territory under its CCA with National is the state of Arizona.

20. Plaintiff The ALS Association, Golden West Chapter, Inc. (the “Golden West Chapter”) is a nonprofit public benefit corporation organized under the laws of California. The Golden West Chapter is a chartered chapter and member of The ALS Association. Its exclusive territory under its CCA with National comprises 31 counties across the state of California, as well as the entire state of Hawaii.

21. Plaintiff The ALS Association, Orange County Chapter, Inc. (the “Orange County Chapter”) is a nonprofit public benefit corporation organized under the laws of California. The Orange County Chapter is a chartered chapter and member of The ALS Association. Its exclusive territory under its CCA with National is Orange County in the state of California.

22. Plaintiff The ALS Association Rocky Mountain Chapter (the “Rocky Mountain Chapter”) is a nonprofit corporation organized under the laws of Colorado. The Rocky Mountain Chapter is a chartered chapter and member of The ALS Association. Its exclusive territory under its CCA with National comprises the states

of Colorado, Utah, and Wyoming.

23. Plaintiff ALS Association, Connecticut Chapter, Inc. (the “Connecticut Chapter”) is a nonstock corporation organized under the laws of Connecticut. The Connecticut Chapter is a chartered chapter and member of The ALS Association. Its exclusive territory under its CCA with National is the state of Connecticut.

24. Plaintiff ALS Association of Georgia, Inc. (the “Georgia Chapter”) is a nonprofit corporation organized under the laws of Georgia. The Georgia Chapter is a chartered chapter and member of The ALS Association. Its exclusive territory under its CCA with National is the state of Georgia.

25. Plaintiff The ALS Association Greater Chicago Chapter (the “Greater Chicago Chapter”) is a nonprofit corporation organized under the laws of Illinois. The Greater Chicago Chapter is a chartered chapter and member of The ALS Association. Its exclusive territory under its CCA with National comprises 46 counties in the greater Chicago area.

26. Plaintiff ALS of Nevada (the “Nevada Chapter”) is a nonprofit corporation organized under the laws of Nevada. The Nevada Chapter is a chartered chapter and member of The ALS Association. Its exclusive territory under its CCA with National is the state of Nevada.

27. Plaintiff The ALS Association New Mexico Chapter (the “New Mexico

Chapter”) is a nonprofit corporation organized under the laws of New Mexico. The New Mexico Chapter is a chartered chapter and member of The ALS Association. Its exclusive territory under its CCA with National is the state of New Mexico.

28. Plaintiff The Greater New York City Chapter of The ALS Association Inc. (the “Greater New York Chapter”) is a nonprofit corporation organized under the laws of New York. The Greater New York Chapter is a chartered chapter and member of The ALS Association. Its exclusive territory under its CCA with National comprises the greater New York City area, including the northern half of the state of New Jersey.

29. Plaintiff The ALS Association North Carolina Chapter (the “North Carolina Chapter”) is a nonprofit corporation organized under the laws of North Carolina. The North Carolina Chapter is a chartered chapter and member of The ALS Association. Its exclusive territory under its CCA with National is the state of North Carolina.

30. Plaintiff The ALS Association Central & Southern Ohio Chapter, Inc. (the “Central & Southern Ohio Chapter”) is a nonprofit corporation organized under the laws of Ohio. The Central & Southern Ohio Chapter is a chartered chapter and member of The ALS Association. Its exclusive territory under its CCA with National comprises 56 counties in the lower two-thirds of the state of Ohio.

31. Plaintiff The ALS Association Chapter of Oregon and Southwest Washington (the “Oregon & SW Washington Chapter”) is a nonprofit public benefit corporation organized under the laws of Oregon. The Oregon & SW Washington Chapter is a chartered chapter and member of The ALS Association. Its exclusive territory under its CCA with National comprises the state of Oregon and six counties in southwestern Washington.

32. Plaintiff Greater Philadelphia Chapter, The Amyotrophic Lateral Sclerosis Association (the “Greater Philadelphia Chapter”) is a nonprofit corporation organized under the laws of Pennsylvania. The Greater Philadelphia Chapter is a chartered chapter and member of The ALS Association. Its exclusive territory under its CCA with National comprises the eastern half of the state of Pennsylvania, the southern half of the state of New Jersey, and the entire state of Delaware.

33. Defendant The Amyotrophic Lateral Sclerosis Association (“National”) is a Delaware nonstock nonprofit member corporation. National’s Certificate of Incorporation is attached hereto as Exhibit 1. National’s members are its chartered chapters, including the Chapters. National and its chapters have operated as a federated organization delivering locally based care services and strong state-based advocacy for those affected by ALS, as well as a centralized program of investing in research to find new treatments and, hopefully, cures for ALS. In line

with its federated model and pursuant to largely uniform CCAs, National holds a “group exemption” from the IRS, giving each of its member chapters Section 501(c)(3) tax-exempt status so they need not independently apply to the IRS for such status.

III. JURISDICTION AND VENUE

34. This Court has subject matter jurisdiction pursuant to 10 *Del. C.* § 341.

35. This Court has ancillary jurisdiction to resolve legal causes of action that are before it as part of the same controversy over which the Court has subject matter jurisdiction pursuant to 10 *Del. C.* § 341.

36. This Court has jurisdiction pursuant to 10 *Del. C.* § 6501 to make declarations of rights and liabilities between the parties hereto.

37. Jurisdiction and venue are proper in this Court because Section 5.1 of the Chapter Charter Agreement states:

Governing Law and Jurisdiction. This Charter shall be governed by the laws of the State of Delaware. The forum for resolution of any dispute hereunder shall be exclusively either in the State of Delaware or in Los Angeles County, California, unless otherwise agreed by the parties. All parties to this Charter hereby submit to the jurisdiction of (i) the federal and state courts in the state of Delaware or (ii) the federal courts in the Central District of California or the California state courts in and for Los Angeles County.

38. Separate from the jurisdictional provision of the CCA, this Court has personal jurisdiction over National as a Delaware corporation.

IV. FACTUAL ALLEGATIONS

A. National and its Federated Structure

39. National is a tax-exempt organization made up of a nationwide network of chapters, each providing comprehensive care services and support to its local ALS community within a specified geographic area.

40. Each Chapter is an independent corporation with a governing board of directors, bylaws, and employees.

41. Each member of each Chapter's board of directors has an independent fiduciary duty to their individual Chapter.

42. Each independent Chapter is responsible for raising its revenue, cultivating donors, and funding and operating its direct care and related programs, as determined by its leadership.

43. Each independent Chapter has entered into a CCA with National.

44. In contrast, National's primary function is to fund research into the causes of and treatments or cures for ALS, to certify ALS multidisciplinary clinics, and to develop awareness of ALS among policymakers, scientists, healthcare professionals, and the general public.

45. National also provides some discrete benefits to the Chapters: primarily, the use of The ALS Association brand and the Association's group exemption under Section 501(c)(3) of the Internal Revenue Code. National

previously took an active role in hosting conferences and producing educational materials for chapter use, though these activities declined over the last decade, and dropped off entirely over the last few years.

46. To fund National’s operations, each Chapter is required to submit roughly 13.6 percent of its gross revenue to National as “Revenue Share”.

47. These direct contributions from all chapters comprised a significant portion—in the 2021 fiscal year,³ more than 21 percent—of National’s overall revenue.

48. Before the de-federation effort, National provided direct care services only in geographic areas that did not have a functioning chapter, either because none existed (“Service Areas”) or because the chapter was insolvent or unable to fulfill its duties (“Nationally Managed Chapters”).

49. There were two Service Areas, corresponding to the state borders of West Virginia and Oklahoma, and five Nationally Managed Chapters: Kentucky, Louisiana/Mississippi, Michigan, Northern New England (covering the states of Maine, New Hampshire, and Vermont), and South Carolina. The goal of these

³ The ALS Association’s fiscal year runs from February 1–January 31, and is numbered according to the year in which it ends. For example, The ALS Association’s FY2023 began February 1, 2022 and runs through January 31, 2023. FY2021 was the last full fiscal year before the July 9 Vote and National’s de-federation effort.

Nationally Managed Chapters was operational stability and growth, and to work with a local board to return the chapters to independent status, although in the last decade only one nationally managed chapter regained independence.

50. Before de-federation, the balance of the country was divided into 34 independent chapters. Attached as Exhibit 2 is a map depicting the Service Areas, National Managed Chapters, and independent chapters as they existed before de-federation.

51. Since the July 9 Vote, 18 chapters have voted to surrender their charters and accept de-federation.⁴

52. These chapters now exist in name only. They have executed, or will soon execute, transfer agreements with National requiring the corporate entities to send 100 percent of their fundraising to National, and in turn rely entirely on National for direction in fundraising, new revenue, and overall operations. And, they will soon execute a Plan of Merger, turning over all assets to National.

53. All employees of the soon-to-be-merged chapters have already become

⁴ These are Alabama, Arkansas, DC/Maryland/Virginia, Evergreen (Alaska, Idaho, Montana, and Washington outside the southwestern portion of the state), Florida, Greater Sacramento, Greater San Diego, Indiana, Iowa, Massachusetts, Mid-America (Kansas, Nebraska, and western Missouri), Minnesota/South Dakota/North Dakota, St. Louis, Texas, Tennessee, Upstate New York, Western Pennsylvania, and Wisconsin.

National employees.

54. Upon closing, which National aims to complete by May 1, 2023, chapter boards of directors will be dissolved. In the interim, however, merging chapters are obligated to spend down their substantial reserves.

55. This final spend-down, likely implemented to avoid scrutiny from state attorneys general for abrogating donor intent, leaves merged chapters with no reserves and completely dependent on National.

56. The Service Areas and Nationally Managed Chapters, already run by National, were absorbed before the push to de-federate.

57. Today, 16 independent chapters remain, of which 14 have joined together as the Chapters in this litigation.⁵ They maintain operations and have continued to remit the 13.6 percent Revenue Share to National. These 14 chapters, to date, decline to vote in favor of de-federation. Attached as Exhibit 3 is a map of The ALS Association territories as they currently stand.

58. Understanding the structure of The ALS Association is crucial to understanding why the Chapters cannot consent to de-federation. Unlike most comparable nationwide organizations, where the national headquarters primarily

⁵ The Northern Ohio Chapter, covering the northern third of the state of Ohio, and the Rhode Island Chapter, covering the state of Rhode Island, have neither agreed to de-federate nor joined the Chapters in this litigation.

exists to coordinate and support the activities of the regional chapters, the Chapters and National have distinct spheres of competence and responsibility within The ALS Association.

59. At the most basic level, The ALS Association is structured so that National directs research and advocacy, and the Chapters provide direct care services while also raising the lion share of funds to support the mission.

60. National expanding to swallow up the Chapters and direct every dollar and every project presents two unacceptable risks for the Chapters.

61. First, National—focusing on what it knows best and having set itself the “moonshot goal” of making ALS a livable disease within the next seven years—will, intentionally or not, starve direct care services to the detriment of existing ALS patients, their families, and their communities.

62. Second, however good National’s intentions, it simply does not possess the local knowledge, relationships, or basic competence to take over the programs of dozens of heretofore independent chapters.

63. National’s only experience with direct care services before de-federation has been in the two Service Areas and five Nationally Managed Chapters—territories where, almost by definition, care services were being provided at a very low level, if at all—and National has not shown much interest in increasing

the level of service in the areas it now controls.

64. In Nationally Managed Chapters and Service Areas, National's own numbers show that it spends less than half as much per person with ALS on direct care services as do the Chapters.

65. Providing care services is simply not what National does.

66. The Chapters, by contrast, have built their operations over decades of work in the communities they serve, and are disproportionately the healthiest and most effective chapters in the Association.

67. The Chapters' network of staff and partners offers ALS patients and their families the local community-based support demanded by the overwhelming, and uniquely devastating, issues that arise following an ALS diagnosis.

68. The Chapters have the staff with the longest history serving ALS patients and families. Their executive directors have over 200 years of collective experience with The ALS Association, and five of the Chapters' executive directors have served under five different National CEOs.

69. If National, with its leadership turnover, lack of success with Nationally Managed Chapters and Service Areas, and history of failed grand initiatives (discussed in detail below), tries to step into the Chapters' shoes, the result is nearly certain: catastrophic disruption, followed by a marked decline in the quality of care

services on which ALS patients' lives depend.

70. Although National does not historically provide direct care to any meaningful degree, it seems to believe that by rolling up all chapter activities into National, employing all the chapters' personnel and having "chapter leadership councils" in local communities, it can somehow suddenly "do it all." This, despite the fact that prior to the July 9 Vote National was unable to run effectively just five Nationally Managed Chapters and two Service Areas.

71. National now seems to believe it will maintain the same high standards of care already provided by the entire chapter network in their respective territories, but also spread that same high quality care to all areas of the country.

72. National made these claims and the BOT majority voted for de-federation in the July 9 Vote—all without a business plan, without modeling, without understanding how the actual services are provided in various regions, and without consideration of the variances in costs of services by city, county, state, or region.

B. Governing Documents

73. As separate corporations, National and each independent Chapter have their own governing documents, including certificates or articles of incorporation and bylaws.

i. The National Bylaws

74. National's bylaws (the "National Bylaws"), attached as Exhibit 4, lay out the governing structure of The ALS Association.

75. Specifically, they provide "[t]he members of The Association . . . shall be chartered chapters of The Association." National Bylaws § 4.1.

76. The National Bylaws establish two governing bodies: a Board of Representatives and a Board of Trustees.

77. The BOR is "the representative forum of the Chapters," National Bylaws § 5.1, consisting of one voting representative from each independent chapter. Among the BOR's responsibilities is the election of BOT members at The ALS Association's annual meeting.

78. The BOT, consisting of between 20 and 36 persons ("Trustees") elected by the BOR in staggered three-year terms, is National's governing board of directors under Delaware law.

79. As members of the governing board, the Trustees owe fiduciary duties to The ALS Association as a whole, and to the individual chapters as the members of The ALS Association.

80. The National Bylaws also establish several standing committees, including a Governance Committee, Executive Committee, Chapter Relations Committee, and others, whose members are appointed by the BOT and BOR.

81. One such committee—Governance—acts as a gatekeeper for changes to the National Bylaws. No changes can be made to the National Bylaws without first being approved and recommended to the BOT by the Governance Committee.

82. In addition, pursuant to National Bylaws § 8.5.2(a), the Governance Committee identifies a slate of nominees to the BOT, thereby exercising significant control over the election process.

ii. The Chapter Charter Agreements

83. Because National and each chapter are separate corporations with their own individual governing documents, the parties' relationship is governed by a bilateral contract, the CCA. A representative CCA is attached as Exhibit 5.

84. The CCAs across the Chapters are substantively identical, and impose rights and obligations on both National and each Chapter.

85. Section 3.2.2 of the CCA obligates National to “seek opportunities to maximize purchasing power and economies of scale for the entire Association and chapter network and . . . provide support to the Chapter to maximize its resources.”

86. Section 3.7 of the CCA authorizes a chapter to request, upon reasonable notice to National, all books and records of the Association to verify the Association's compliance with its obligations under the CCA.

a. Termination

87. The CCA provides exactly two ways it may be terminated: (1)

voluntary Chapter surrender under Section 4.1; or (2) involuntary termination by National under Section 4.2.

88. Section 4.1 provides a Chapter may voluntarily surrender its charter if certain conditions are met, including at least 30 days' prior notice to National and a two-thirds vote of the Chapter's governing board.

89. Section 4.2 lays out, in detail, the specific steps National must take to involuntarily terminate a CCA:

Termination of Charter by The Association. If at any time the Chapter fails to comply in all respects with The Association Policies or its obligations under this Charter, including without limitation, the failure to pay the prescribed share of its revenues to The Association, The Association shall have the right to terminate this Charter and revoke the Chapter's membership in The Association. Any such termination of the Charter by The Association must first be recommended to the Board of Trustees of The Association by the vote of a majority of all the members then appointed to the Chapter Relations Committee of The Association, regardless of the actual number of members present at any meeting duly called for such vote. The Chapter will be notified in writing of any such termination recommendation no less than thirty (30) days' prior to the vote of the Board of Trustees of The Association (or its Executive Committee) on such recommendation. Such notice to the Chapter shall state the reason(s) for the recommended termination. The Association Board of Trustees or the Executive Committee, acting on behalf of the Board in the interval between Board meetings, shall then make a determination regarding the recommended termination; and any such termination shall require a vote by the greater of (i) two-thirds (2/3) of the members of The Association Board of Trustees or Executive Committee present and voting at a duly called meeting of (ii) a majority of all the members then elected or appointed to the Board of Trustees or Executive Committee, regardless of the actual number of members present at any

meeting duly called for such vote. Such termination shall be effective upon notice given to the Chapter.

90. As Section 4.2 provides, termination by National may only be initiated for cause, and requires four distinct steps: (1) a recommendation by a majority of all members of the Chapter Relations Committee; (2) written notice to the chapter of the recommendation, including the underlying reason(s); (3) a vote for termination of either two-thirds of the BOT or Executive Committee present, or the majority of the whole BOT or Executive Committee, at a meeting duly called for that purpose; and (4) notice of termination to the chapter. CCA § 4.2.

91. None of the Chapters has taken any action to terminate its CCA pursuant to Section 4.1, and despite threats, National has not yet performed any of the steps required pursuant to Section 4.2 to terminate any Chapter's CCA.

92. This is significant, as there are consequences “[u]pon termination of the Charter **under Sections 4.1 or 4.2 above.**” CCA § 4.3 (emphasis added).

93. These consequences include transfer of chapter assets to National. *See* CCA § 4.3.4.

94. Currently, the assets and monetary reserves of the Chapters total tens of millions of dollars, which National desperately needs to support its failing revenue and bloated expenses.

95. Notably, as discussed in further detail in Section IV.E.iv.c below,

National has declared that any chapter refusing to de-federate and merge with National will have its CCA revoked and all of its assets seized by National.

96. Conspicuous by its absence from the CCA is any provision allowing National to force chapter merger as a way to terminate the CCA, and any arguments National now makes about breach of the CCAs is mere pretext to grab assets.

97. Indeed, the CCA requires National to consult with a chapter prior even to altering its assigned *exclusive* geographic territory, *see* CCA § 2.1, and the CCA requires chapters and National to work *cooperatively* and in *coordination*, not in competition, *see* CCA § 2.2.5.

98. National cannot simply issue a “policy”, as it has done, compelling merger and then, when chapters refuse, declare the refusal a violation of the CCA, as it has promised to do. *See* January 11, 2023 email from T. Zeff attached hereto as Exhibit 6.

b. Rights and Relief

99. The CCA provides reasonable attorneys’ fees and costs to the “prevailing party” in “any legal proceedings brought in connection with this Charter.” CCA § 5.2.

100. Section 5.4 of the CCA, titled “No Impairment,” provides “[n]either The Association nor the Chapter shall take, or omit to take, any action which will impair the right, power, authority and capacity of The Association or the Chapter to

effectuate any other rights under this Charter.”

101. The CCA also states “the non-violating party shall have the right, and is hereby granted the privilege, of obtaining specific performance of this Charter or any other injunctive, equitable or other available relief in any court of competent jurisdiction in the event of any breach hereunder by the other party.” CCA § 5.7.

102. The CCA “shall be *perpetual* until terminated as *set forth in this Charter.*” CCA § 5.12 (emphasis added).

C. The History of National’s Current Plan

103. Despite the clear contractual relationship between National and the Chapters, National’s ongoing attempt to coerce the Chapters into self-liquidation is the culmination of years of effort by National to centralize the entire organization under its control.

i. The Ice Bucket Challenge and Subsequent Revenues

104. National’s modern history begins in the summer of 2014 with the ALS “Ice Bucket Challenge.” The Ice Bucket Challenge, a viral social media trend in which participants would pour buckets of ice water on their own heads to raise money for ALS research and challenge friends to do the same, raised \$115 million for The ALS Association in a matter of months.

105. By comparison, in the last full year before the Ice Bucket Challenge (FY2014), National raised a total, including chapter Revenue Share, of only \$24.0

million.

106. The funds and publicity resulting from the Ice Bucket Challenge suddenly—almost accidentally—catapulted National into the highest tier of national charitable organizations. But, over the succeeding seven years, National proved largely unable to capitalize on this surge of public support and convert one-time donations into a sustained donor base.

107. For example, in the fiscal years ending 2018–2020, the most recent pre-pandemic figures, National’s revenues in the form of direct contributions and grants averaged just over \$28.5 million per year, according to its Form 990s filed with the IRS.⁶

108. As its Form 990s show, National ran a deficit of between \$4.8 and \$13.1 million every year during that same period, and net assets shrank from \$104.5 million to \$90.2 million. Notwithstanding, National sharply – and unsustainably – increased its spending.

109. Overall, between FY2014 and FY2021, National’s estimated fundraising revenue, exclusive of chapter Revenue Share and in-kind donations, grew by only 16.9 percent.

⁶ National’s Form 990s dating back to 2002 are publicly available at <https://projects.propublica.org/nonprofits/organizations/133271855>.

110. By contrast, the Chapters' fundraising revenue grew by 39 percent during that same period.

a. Salesforce

111. Salesforce is a software company providing customer relationship management ("CRM") software to businesses. Since at least 2019, National has attempted to carry out a substantial centralization of the chapters' technical and back-office operations within the Salesforce CRM platform.

112. This centralization would have included the implementation of a "single URL" and "single donation button" for National and all chapters, depriving the latter of an independent online fundraising presence.

113. Several chapters had, and openly expressed, serious concerns about this centralization program, as well as the unilateral way in which National sought to carry it out.

114. For example, in August 2019, the Board President of the Oregon and SW Washington Chapter wrote to National on behalf of the entire board expressing "significant concerns about governance, communications and actions being taken by [National] regarding deployment of a new website, data infrastructure, and potential new 'collaborative fundraising' policies." The President observed "inconsistent and disjointed communication, and directive rather than collaborative tone. It is not clear how, or even if, the federation's governance has been followed on major decisions."

This letter is attached as Exhibit 7.

115. In September 2020, the Board Chairs of the Greater Philadelphia, Greater New York, and Golden West Chapters submitted a joint letter to National expressing “deep concerns and fundamental issues” with the proposed “Business Rules/Framework” governing the Salesforce centralization program, including that the program infringed on the chapters’ separate existence and rights under their CCAs. This letter is attached as Exhibit 8.

116. The three chapters that signed the September 2020 letter are among the largest and most successful in The ALS Association, accounting by themselves for 28 percent of overall chapter revenue, 18 percent of The ALS Association’s total revenue (all chapters plus National), 21 percent of the nationwide ALS community served, and 24 percent of the affiliated ALS clinics, despite only covering about 19 percent of the total U.S. population.

117. To date, National has not meaningfully responded to these Chapter concerns. Neither has National rolled out its new Salesforce platform, despite more than three years of effort and undisclosed total expenditures.

118. In fact, after the July 9 Vote, National’s leadership indicated they would only make this Association-wide investment in technology available to chapters who merged or plan to merge.

119. The Salesforce story is emblematic of National’s refusal to work collaboratively with the Chapters, as the CCAs require, and National’s inability to implement tools designed to support fundraising.

120. Furthermore, the Salesforce program was only approved by the BOT in the first place *contingent* on the adoption of satisfactory business rules—a condition that, as the letter from Philadelphia, New York and Golden West shows, was never achieved.

b. Competition with Chapters

121. The once collaborative relationship between the Chapters and National deteriorated over the past decade, particularly since the Ice Bucket Challenge.

122. For example, National used to host frequent listening tours, workshops, and conferences around the country, collaborating with the Chapters on best practices in ALS research and care.

123. National provided Chapters with literature showing the progress in ALS research, making it easy for Chapters to educate donors—and potential donors—on how their contributions were used.

124. Today, the benefits the Chapters receive from National are largely limited to branding, use of National’s 501(c)(3) status, minimal data support, and federal lobbying.

125. At the same time, as its support of the Chapters has diminished,

National has begun to operate in outright competition with the Chapters.

126. For example, National has engaged in direct e-mail solicitation to donors who are clearly marked as Chapter donors in The Association’s fundraising platform. National has also placed digital and social media advertisements in which the only donation option presented is to donate directly to National.

D. National Moves to Seize Control

i. The COVID-19 Pandemic

127. In early 2020, with its revenue growth anemic, its financial commitments swollen and its Salesforce initiative stalled, National saw an opportunity with the COVID-19 pandemic to fabricate a “state of emergency” justifying its aim of centralizing the chapters (and their revenues) under National control.

128. In response to spring 2020 pandemic shutdowns, National implemented a requirement that, in addition to quarterly reporting, the chapters also send monthly financial reporting to National with FY2021 revenue projections.

a. The Tiger Team

129. In June 2020, the BOT created a so-called “Tiger Team” consisting of members of the BOT, BOR, and National staff to (a) recommend a short-term crisis strategy to maintain continuity of care, and (b) consider two to three new organizational business models.

130. By September, the Tiger Team had produced several recommendations. Foremost among them was an “opt-in regionalization” strategy wherein healthy chapters would be encouraged to merge into a smaller number of regional chapters, while failing or Nationally Managed Chapters would be forced to do so. The Tiger Team’s report is attached as Exhibit 9.

131. Immediately after the Tiger Team’s report, the BOT adopted the Tiger Team’s recommendation to pursue opt-in regionalization. But at the same time, it also recommended the creation of a working group to “examine and recommend the best future operational structure for [National], with specific focus on a single-corporation model.”

132. The basis for this recommendation was that “the current trend across like health-related non-profits is to convert to a single-corporation model.” A report of the actions taken at the September 2020 BOT meeting is attached as Exhibit 10.

133. The Tiger Team’s work was based on two erroneous assumptions. *First*, that early-pandemic revenue declines would persist indefinitely, and *second*, that a COVID-19 vaccine would not be widely available until the first quarter of 2022.

134. These assumptions quickly proved false.

135. The chapters were supported by federal pandemic assistance measures

(including PPP grants/loans) and, more importantly, donations rebounded quickly, greatly exceeding projections. In fact, 2021 proved to be some chapters' best year ever from the perspective of fundraising.

136. Also, effective COVID-19 vaccines were approved before the end of 2020, and widely available by the spring of 2021—well before National's projection.

137. Nonetheless, National continued to operate on its two erroneous assumptions, intentionally pretending chapter revenues would never recover from pandemic lows.

b. The Future Corporate Model Working Group

138. In fall 2020, subsequent to the Tiger Team's report, National created several working groups, including a Regionalization working group and a Future Corporate Model ("FCM") working group.

139. The latter's charge was "[t]o examine and recommend a potential future corporate model for The ALS Association, with specific focus on a single corporation model." Exhibit 10.

140. No later than October 2020, National engaged a consulting firm, the McCormick Group, to advise the FCM. From the beginning, the FCM was pushed to recommend a single-corporation structure by National and the McCormick Group.

141. By January 2021, the FCM had identified five potential corporate models, including a "Hybrid 1" model in which some chapters would remain

independent, some would convert to National management, and some would be consolidated into regional chapters. The January 2021 FCM report is attached as Exhibit 11.

142. Of the five proposed models, the “Hybrid 1” model was the most similar to the existing federated structure.

143. In the FCM working group’s final report, 54.5 percent of its members preferred the “Hybrid 1” model as their first-choice recommendation, while 40.9 percent preferred de-federation.

144. The FCM working group final report further revealed the BOT had “informed the Work Group that status quo . . . is not an acceptable path forward, so that was not an option in the rankings.” This report is attached as Exhibit 12.

145. But in a subsequent April 2021 presentation to the BOT Executive Committee, the McCormick Group reported that 50 percent of FCM working group members preferred de-federation as their first or second choice (out of four), while 54.5 percent preferred “Hybrid 1” as their first or second choice.

146. At best, this description was obfuscation. Since all of Hybrid 1’s votes were first-choice votes—it received no second-choice votes—the McCormick Group’s reporting of results using first- and second-choice votes inflated the level of putative support for full de-federation from 40.9 percent (a clear minority) to 50

percent. The April 2021 McCormick presentation is attached as Exhibit 13.

147. In short, even in a committee handpicked by National, prodded by National’s hired consultant, and foreclosed from even considering the existing federated structure as laid out in the National Bylaws and CCAs, National could not get a majority in support of de-federation as either the first or second choice out of four possible choices.

148. Rather, a majority of the FCM working group preferred the structure that would maximally preserve at least some chapters’ independence.

149. Meanwhile, two surveys of important stakeholders—that is, not National’s handpicked committees—showed overwhelming majorities against de-federation.

150. In March 2021, in a survey of 33 chapter executive leaders, 30 (90.9 percent) voted “in favor of the ALS Association retaining a federated corporate membership model.” The other three (9.1 percent) said that their minds were not yet made up and they required more information. Not a single chapter executive was “in favor of the ALS Association moving to a single corporate model.”

151. The following month, the 34 members of the BOR completed the same survey: 28 (82.4 percent) were in favor of retaining the federated model, while six (17.6 percent) were unsure. Again, not a single respondent favored de-federation.

152. In the same survey, the BOR members were asked how long they anticipated it would take for their chapter revenues to return to pre-pandemic levels. Of the 31 who answered, 13 (41.9 percent) said it would take one year, 13 (41.9 percent) said it would take two years, and five (16.1 percent) said that their chapters never experienced any revenue shortfall to begin with. Not a single respondent selected “three years” or “four or more years,” the other options in the survey. These surveys are attached as Exhibit 14.

153. On May 20, 2021, despite overwhelming opposition to de-federation, the McCormick Group sent the Executive Committee a recommendation to proceed with de-federation over an 18–24 month transition period.

154. The McCormick Group’s presentation to the Executive Committee contained a single slide stating chapters “choos[ing] not to abide by the agreements have no choice but to disaffiliate,” with National “gain[ing] all/most of the assets” and getting “the right to function in the area.” This presentation is attached as Exhibit 15.

155. The Executive Committee unanimously adopted the McCormick Group’s recommendation, proposing that the BOT “restructure the Association to a single corporation with distributed mission delivery within an 18–24 month period.”

ii. The July 9 Meeting

156. On July 9, 2021, the full BOT met to consider the Executive

Committee's de-federation proposal.

157. The McCormick Group presented a report in favor of de-federation completely devoid of details about either the process or the expected results. This report is attached as Exhibit 16.

158. For example, the sum total of the financial information presented to the BOT at the July 9 meeting was the following slide:



159. In the meeting, Sue Gorman, then Chair of the BOT, admitted that “some of the chapters’ [financial] numbers looked better than anticipated and our numbers may be too,” but that “money has helped us cover some problems” and “[t]he only thing I think that inhibits us today is the structure in which we are organized.”

160. Kim McCormick agreed: “[I]f the organization was in a crisis situation, then the discussion would look and feel very different.”

161. These admissions completely undermine National’s original pretext for

de-federation—that is, the organization as a whole was in such a severe pandemic-related crisis that “status quo is not an option.”

162. Now that it is clear the pandemic did not present a dire financial threat, National has abandoned citing the pandemic as justification for complete organizational change.

163. Instead, National cites things like “distributed mission delivery,” which is a euphemism for “lowest common denominator care across the country.” And, it cites cost savings through economies of scale, which National never attained in its decades-long existence despite the contractual commitment to “seek opportunities to maximize the purchasing power and economies of scale of the entire Association and Chapter network and [to][] provide support to the Chapter[s] to maximize [their] resources.” CCA § 3.2.2.

164. Most disturbing of all, Ms. McCormick admitted at the July 9 meeting that neither the McCormick Group nor National had any plan, or had done any meaningful analysis, of how the de-federated Association would function as a single corporation.

165. Rather, Ms. McCormick stated, “this process is kind of, if you could imagine like **building a plane while we’re flying it**, and the engineers and the builders are the transition design team.” (emphasis added).

166. Later in the meeting, Ms. Gorman stated, “if any chapter disaffiliates that territory is open for us to re-cultivate, they don’t leave with The ALS Association name, and we could hang a shingle the next day.”

167. At the meeting, a motion was proposed to have National take nine weeks to study de-federation and seek buy-in from the chapters in preparation for a later vote.

168. Urging the BOT to vote against the motion for the nine-week delay, Ms. Gorman said that further study would make no difference since “there is a belief out there that the fix has been in from Day 1.” The motion was defeated.

169. In the end, the BOT passed a motion resolving “that the CEO and her staff are hereby authorized to take affirmative steps to move the organization to a unified single corporation with distributed mission delivery within the next 18–24 months.”

170. The final vote was sixteen in favor of the motion, nine opposed, and two abstentions.

171. Two BOT members subsequently resigned in protest of the process.

E. National’s Actions Since the July 9 Vote

172. Since the July 9 Vote, National has made a concerted effort to undermine the Chapters’ operations and efforts, thereby breaching the CCAs.

173. Before its illegal and *ultra vires* suspensions of representatives of

Chapters from the BOR and committees (discussed below), National did not have the votes on the Governance Committee to amend the National Bylaws, or the votes on the Chapter Relations Committee to declare any of the Chapters in breach of the CCA pursuant to Section 4.2 of that document.

174. Despite the July 9 Vote, National cannot legally effect de-federation through the normal processes laid out in the governing documents, and must instead either cajole or coerce each chapter into liquidating itself “voluntarily.”

175. Rather than support and enable the Chapters, National has chosen to interfere with and undermine their mission delivery.

176. For example, National has engaged in a focused campaign to recruit critical Chapter staff by sending misleading communications designed to convince them that employment with National is their only chance of job security. Examples of such communications are attached as Exhibit 17.

177. This behavior continued even after National was instructed to cease and desist by the Chapters. A cease and desist letter from the Oregon & SW Washington Chapter is attached as Exhibit 18. The Oregon & SW Washington Chapter never received any response to this letter.

178. Staff retention is an existential issue for the Chapters. They exist to provide direct care and support for ALS patients and their families and require paid,

skilled staff to continue this mission, both by personally administering that care and by fundraising to support Chapter operations.

179. Moreover, the Chapters are self-sustaining and receive little support from National. By recruiting Chapter staff, National is directly and deliberately undermining the Chapters' ability to continue as independent entities, in violation of the CCAs.

180. Apart from potentially abrogating donor intent, National's actions during the 2021 Day of Giving, the Tuesday after Thanksgiving, provide another example of National's interference.

181. On the Day of Giving, it became clear that Chapters' fundraising efforts were falling short of expectation. After some investigation, it was determined National had altered the online donation portal so that donations intended for the Chapters would redirect to National.

182. National's actions deprived, and continue to deprive, the Chapters—and the ALS patients they serve—of critical donations, causing lasting impacts on future donations.

183. Frustrated at the Chapters' resistance to its plans, and unable to effect de-federation through the normal channels of corporate governance, National seems willing to go to any length to kill off the Chapters.

i. National's Plan for the De-Federated Association

184. While National went into the July 9 Vote with no plan for the de-federated Association, intending to “build the plane while flying it,” National has since designed a structure centralizing all meaningful decisions and control in its Arlington headquarters.

185. In September 2021, National circulated a draft document titled “Terms of Unification” to the Chapters, laying out basic suggested terms under which chapters would unify into National. The “Terms of Unification” document is attached as Exhibit 19. This document provides:

- The separate legal existence of the chapters will be abolished by legal merger into National;
- Chapter boards will become “Community Leadership Councils,” with a purely advisory role and no fiduciary responsibility;
- All chapter staff will become employees of National;
- All budgets will be controlled by National and all funds raised (unless donor-restricted to a specific geographic area) will go entirely to National; and
- Current programs will continue until they “are deemed in need of change.”

186. The term sheet also requires chapters to spend down reserves before

closing their mergers.

187. Chapters raised reserves to ensure vital services provided to ALS patients and their families continue in times of financial downturn. National likely added this provision to avoid drawing attention from state attorneys general who might object to large sums of money raised by in-state donors for an in-state charity leaving the jurisdiction.

188. By spending down their reserves, chapters have no choice but to financially rely on National, a reality that causes the Chapters' boards of directors considerable concern, and runs afoul of their fiduciary obligations.

189. Other details of National's plan have crystallized over the last year.⁷

190. For example, in place of the previous 34 independent chapters (plus two Service Areas and five Nationally Managed Chapters), National intends to divide the country into ten "territories" for provision of direct care services. Staff are to be managed and assigned on a "territory" basis, so even the remnant "Community Leadership Councils" will reasonably have to compete for staff time and resources from their own former employees at the territory level.

191. On or around January 11, 2022, National circulated a form "Transfer

⁷ On December 8, 2021, five months *after* the July 9 Vote, National circulated a plan for "Unified Structure with Distributed Mission Delivery," laying out its post-hoc and substantively questionable case for de-federation.

Agreement” by which chapters would transfer all of their assets, liabilities, and employees to National, effectively becoming shell entities in preparation for their later legal merger into the National entity.

192. As of now, 18 chapters have already executed, or will soon execute, the Transfer Agreement and de facto surrendered their independent existence. Today, these chapters have no employees, send all contributions directly to National, rely entirely on National to pay their bills, and have only the task of overseeing their existing reserves until a legal merger is consummated, no later than February 1, 2024 (and more likely May 1, 2023). The Transfer Agreement is attached as Exhibit 20.

193. Despite being independent in name only, these shell chapters still participate on the BOR and BOT committees, contrary to National’s Bylaws and policies.

194. The National Bylaws define the BOR as “the representative forum of the Chapters, representing the perspective and concerns of the local and regional chapter-related activities, services and mission.” National Bylaws § 5.1. The National Bylaws further require that voting BOR representatives must “be a voting member of the governing board of the Chapter with the right to participate in all meetings.” *Id.* § 5.3.1(a)(i). The BOR representatives from merged chapters may (or may not) technically remain on the boards of their shell chapters, but they have

no capacity to articulate local concerns or speak to their chapters’ “activities, services and mission” when in fact the chapters perform no activities, and have no capacity or resources to do so.

195. The purpose of the BOR is to serve as a forum for the chapters and an essential counterweight and check on the power of the BOT. Retaining representation from chapters that exist only temporarily, in name only—effectively, giving National half the votes on the body meant to counterbalance it—frustrates the entire organizational design of The Association.

ii. The Chapters Ally

196. In the lead-up to and aftermath of the July 9 Vote, the Chapters sought to get more information from National about its plans for de-federation. These Chapters—by and large the healthiest and most successful in The ALS Association—comprise 41 percent of the independent chapters before de-federation, serve more than 46 percent of the known ALS patient population, are affiliated with 54 percent of the country’s certified ALS clinics, and together account for more than 40 percent of The ALS Association’s total revenues (all chapters plus National).

197. After the July 9 Vote, the Chapters served a books and records request on National seeking specific information, financial and otherwise, considered by the BOT in support of the July 9 Vote.

198. While National, in part, responded to the request, it failed to produce

any meaningful financial analysis or plan showing how a de-federated organization would operate.

199. The only conclusion the Chapters could draw is that National failed to provide this information because it did not exist—and certainly did not before the July 9 Vote.

200. The information National provided was consistent only with a clear intent to forge ahead with a preordained agenda of de-federation at all costs. This lack of projections and business plans was entirely consistent with the statements made by National’s consultant (Ms. McCormick) and Board Chair (Ms. Gorman) during the July 9 meeting cited above.

201. Accordingly, by January 2022, in the absence of vital information, the boards of 16 independent Chapters determined the fiduciary duties owed to their Chapters and those they serve precluded them from agreeing to turn in their charters and merge with National. They affirmatively voted against de-federation, at least at that time.⁸ These resolutions are attached as Exhibit 21.

202. Another chapter, the Georgia Chapter, wrote to the BOT expressing its support for the vote against de-federation. The Georgia Chapter letter is attached as

⁸ Two chapters, Texas and Upstate New York, subsequently voted to merge with National.

Exhibit 22.

203. Despite this widespread and vocal opposition from the Association's most successful chapters, National failed—and still fails—to provide the Chapters with a compelling rationale for de-federation or any confidence in National's ability to maintain quality of care services and local relationships in a de-federated organization. It was clear to the Chapters that National did not have the detailed information requested and could not provide it.

204. Over the last 18 months, National has feigned confusion as to why the Chapters would even ask such detailed questions.

205. For example, in an August 2021 meeting with the Nevada Chapter, National laid bare its lack of information that would assist Nevada in making an informed decision, as well as National's lack of knowledge as to what the Nevada Chapter does on a daily basis.

206. At the meeting, National's then-Vice President of Organizational Readiness, [REDACTED], could not demonstrate any way in which de-federation would help ALS patients in Nevada. Rather, Mr. [REDACTED] made clear he had zero knowledge about the ALS clinics in Nevada, or the care services that the Nevada Chapter provides to ALS patients.

207. National also expressed fundamental misunderstandings about

corporate donations in the state of Nevada, particularly from the state's large casinos.

208. The Nevada Chapter subsequently joined the Chapters.

209. The Nevada Chapter meeting, and meetings like it with other chapters, are just one example of National's lack of knowledge about what the Chapters do in their territories. Of particular concern is National's unfamiliarity with what has made the Chapters successful: their relationships. Indeed, the Chapters are built on relationships—with donors, state governments, clinics, and most of all, patients and their families—often cultivated over years or decades. National's statements to the Nevada Chapter starkly demonstrate that National knows nothing about these relationships and casts serious doubt on its ability to continue to nurture them under the auspices of a de-federated organization.

210. National's dearth of due diligence going into the meeting is even more stark given the entire purpose of the meeting was to reassure the Nevada Chapter that de-federation would leave its mission in safe hands. It did the opposite.

211. As described above, sixteen chapters passed resolutions by January 2022 opposing de-federation. The Georgia Chapter chose to give National a chance to respond to urgent and pointed questions about the future state of the de-federated Association. The Georgia Chapter's letter to National containing these questions is attached as Exhibit 23.

212. These included, among many others, questions such as:

- “What problem(s) is the restructuring designed to solve?”
- “How will the unification process guarantee no less than the same level of quality care services provided by chapters?”
- “Will you consider any alternatives or amendments to the plan[?]”
- “Will you take punitive actions if [reluctant chapters] disagree with unification? Will the 501(c)(3) status be removed from them? Will you demand their assets? Are you willing to take action against your own chapters?”

213. National’s initial response to this letter, the text in bold black type in Exhibit 24, was threadbare, alternating between condescension and menace.

214. To Georgia’s request for information about the logic and materials supporting de-federation, National did no more than refer to materials previously submitted, including earlier emails and the post-hoc de-federation plan attached as Exhibit 25.

215. To Georgia’s question about maintaining care services, National vaguely noted its intention to “utilize data-driven metrics” to “invest as needed in staff or program funding,” as if program effectiveness is no more than a dial that can remotely be turned up or down at will.

216. National responded that it would not “at this time” consider any alternatives to unification, and to Georgia’s pointed and specific questions about punitive actions against reluctant chapters, National’s entire initial response was as follows:

As previously stated, the current charter agreement recognizes chapters of the Association as operational managers of the Association’s assets. If an organization chooses to leave the Association, their assets will remain assets of the Association, including their 501(c)(3) status. The Association is prepared to immediately step in and serve the community once served by that chapter.

217. National later supplemented its response, in the text in blue type in Exhibit 24, to take an even harder line, adding that chapters may have their charters “revoked due to non-compliance with policies” and that National “will complete unification.”

218. On February 25, 2022, National purported to set a critical deadline: the BOT passed a resolution stating chapters “must indicate intent to unification on or before 9/1/22,” with a merger agreement no later than January 31, 2023, and “[u]nification effected on or before 1/31/24.” The February 25 BOT resolution is attached as Exhibit 26.

219. While the fate of uncooperative chapters was at that time left unsaid by the BOT, National’s response to the Georgia chapter was clear: “[i]f an organization chooses to leave the Association, or surrenders their charter, or their charter is

revoked due to non-compliance with policies, their assets will remain assets of the Association, including their 501(c)(3) status. The Association is prepared to immediately step in and serve the community once served by that chapter.”

iii. National’s Unsustainable Hiring Spree

220. In support of its new structure, National embarked on an unprecedented hiring program. In its FY2023 budget, approved at a special BOT meeting on January 15, 2022, National planned for a headcount increase from 105 to 172, of which 33 would be poached chapter staff.

221. But, National’s budget confirms the organization lacks the resources to sustain this explosive headcount. The 2023 budget identifies projected operating revenues of \$35.3 million against expenses of \$59.5 million—a \$24.2 million (40.6 percent) shortfall, while salary expenses are projected to increase by \$7.4 million over FY2022 projections. The FY2023 budget and a summary presentation are attached as Exhibits 27 and 28, respectively.

222. The reality of the situation for National is even worse than it appears on the surface. Analysis of the 18 specific chapters that have agreed to merge with National shows they are, as a group, financially weaker than chapters that have not merged. In the fiscal year ending in 2021, these 18 chapters collectively raised \$29,538,130, compared to \$33,248,775 raised by the 15 Chapters.

223. These merging chapters have also, as a group, shown lagging

fundraising growth: 30 percent overall between FY2014 and FY2021, compared to 40 percent for the Chapters during the same period.

224. By and large, National has been able to prod chapters into de-federating because they were financially vulnerable. Merged, they are no more secure, as National's resources are clearly stretched to the breaking point.

225. By August 31, 2022, National was showing a budget deficit of nearly \$26 million.

iv. Mediation and Escalation

226. In a determined effort to arrive at an acceptable compromise and avoid litigation, the Chapters met with representatives of National in April 2022 for a two-day confidential mediation facilitated by a professional mediator suggested by counsel for National.

227. The mediation did not succeed in resolving the dispute between the Chapters and National.

228. National's pressure campaign only intensified after the unsuccessful mediation.

229. For example, on or around August 18, 2022, Ms. Zeff sent an email to chapter boards and executives doubling down on the September 1 decision date, stating if a chapter had not "engage[d], in good faith, in the process of unification" by September 1, "the [charter] surrender process . . . will begin in October 2022."

This email is attached at Exhibit 29. That timeline was later retracted by BOT Chair, Scott Kauffman.

a. The Chapters Take Action to Protect their Tax-Exempt Status

230. Given the Association's apparent determination to pursue de-federation at all costs, some volunteers took a step in early July 2022 to protect the tax-exempt status of the Chapters.

231. Specifically, they caused the formation of an Arizona nonprofit corporation that would obtain tax-exempt status under Section 501(c)(3) and serve as a fiscal sponsor in the event the Association were to exclude one or more dissenting Chapters from National's group exemption.

232. The new nonprofit, tax-exempt 501(c)(3) corporation's name is ALSU United, Inc. ("ALSU").

233. By creating ALSU, these individuals acted in accordance with their duties to protect Chapter assets by safeguarding the Chapters' ability to continue operations and raise tax-exempt contributions for the benefit of their constituents—those with ALS and their families.

234. ALSU has engaged in no public activities, has not begun to solicit funds, and has not received any money or assets from the Chapters.

235. ALSU's actions are limited to preparatory steps to be ready in the event that one or more of the Chapters loses access to or is otherwise unable to raise funds

under National's group Section 501(c)(3) exemption.

236. ALSU is *not* operating in competition with The ALS Association.

b. National's Illegal and Ultra Vires "Suspensions" and the Chapters' § 220 Action

237. On August 26, 2022, legal counsel for National wrote to five of the Chapters, alleging the very "formation and existence" of ALSU was a breach of the Chapter Charter Agreements, the Association's Conflict of Interest Policy, and fiduciary duties allegedly owed to the Association. This letter is attached as Exhibit 30.

238. According to the letter, six Chapter volunteers—who are either designated representatives of their chapters on the BOR, BOR officers elected by the representatives or BOT committee members—were "suspended" by the Executive Committee of the BOT, which had "recently held a meeting." The purported suspensions barred the volunteers from attending meetings of the BOR and BOT committees.

239. The letter further suggested, in a footnote, that the five chapters to which the letter was addressed were "Breaching Chapters," and that the "Executive Committee and/or the Board of Trustees" would investigate whether their charters should be terminated.

240. These purported "suspensions" should be viewed in the context of the

ongoing dissent of the Chapters to the Association’s unilateral attempt to force merger.

241. New Trustees are nominated and elected each year. The BOR is central to that process, which is not a narrowly focused perfunctory “nomination and election” role. Under the National Bylaws:

The BOR shall be the representative forum of the Chapters, representing the perspective and concerns of the local and regional chapter-related activities, services and mission to The Association management and the BOT. The BOR shall, through the Representatives (as defined in Section 5.3) be a liaison between the BOT and Chapters.

* * * *

At the annual meeting there shall be a BOT and BOR forum. The forum shall be an exchange of information for the mutual benefit of Trustees and Representatives on any aspect of The Association’s operations, affairs, initiatives, strategic policies, plans or direction. The agenda for the annual forum shall be determined by the Trustees Chair in consultation with the BOR Chair.

National Bylaws, §§ 5.1, 5.4.1(b).

242. Thus, the “suspension” of the Chapters’ designated representatives and elected BOR officers, particularly in light of the ongoing dissent of nearly half the chapters to the unilateral de-federation being pursued by the incumbent BOT, was not a trivial matter.

243. Instead, it was a blatant attempt to foreclose effective debate and deliberation over a core issue of corporate policy and effectiveness by shutting down

the forum envisioned for that very purpose in National's Bylaws and in the Chapter Charter Agreements.

244. Neither the BOT nor its Executive Committee had the authority to suspend a designated representative or a BOR officer. Consistent with their role as representatives of the chapters, authority over BOR representatives' designation and removal is reserved in the first instance to the designating chapter.

245. Under the National Bylaws, representatives serve "at the pleasure of the Chapter that designated him or her and may be removed *by such Chapter* at any time for any reason." National Bylaws § 5.3.3(b) (emphasis added).

246. The only other path to removal of a BOR representative is removal for cause by the BOR, which requires notice and an opportunity to be heard. *Id.*

247. There is no power under the Bylaws to "suspend" a representative, and the power to remove a representative is reserved to the designating chapter or to the BOR; neither the BOT nor its Executive Committee has any role or authority in the matter.

248. Even with the manifest lack of authority of the BOT and its Executive Committee, National demanded the relevant Chapters provide it with documents relating to the formation of ALSU, ostensibly for the purpose of investigating the Letter's allegations. Without waiving any objection, two of the five affected

Chapters supplied National with non-privileged responsive documents on September 14, 2022. The other three produced nearly 1500 responsive documents on September 23, 2022, with a small supplemental production on October 6, 2022.

249. No “investigation” ever materialized and the affected representatives remained excluded from BOR and committee activities.

250. For at least six weeks after delivery of the documents, none of the three individuals designated by National to receive the books and records produced by the Arizona Chapter had accessed the link to those documents.

251. On October 11, 2022, certain of the affected Chapters delivered to National a demand for inspection of ten narrowly targeted categories of books and records related to the purported suspensions. These Chapters made this demand under both 8 *Del. C.* § 220 and Section 3.7 of the CCAs. A copy of the demand letter is attached as Exhibit 31.

252. In contrast to the Chapters’ speedy collection and review of numerous documents in response to National’s bogus desire for an “investigation,” on October 20, 2022, counsel for National responded that National would comply with only two of the ten categories in the Chapters’ books and records demand. This letter is attached as Exhibit 32.

253. After a follow-up letter to National’s counsel went unanswered, the

affected Chapters brought an action in this Court (the “§ 220 Action”) on November 16, 2022 under the procedure laid out in 8 *Del. C.* § 220 to vindicate their right to National’s books and records.⁹

254. That very day, counsel for National sent the Chapters a letter reiterating its legal positions but agreeing to provide unspecified “additional documents.” After review, the handful of additional documents National provided still fell far short of the Chapters’ books and records demand. This letter is attached as Exhibit 33.

255. The following day, counsel for National—taking the position that they had always intended to provide the (insufficient) additional documents even before the Chapters filed the § 220 Action—again wrote to counsel for the Chapters stating that it was in the best interests of the Chapters, National, and their shared mission to avoid a public dispute, and asking the Chapters to withdraw the § 220 Action. This email correspondence is attached as Exhibit 34.

256. In response, counsel for the Chapters informed National via letter that, of the 27 additional documents National provided, only ten were even arguably responsive to the Chapters’ books and records request. As a result, nine of the Chapters’ ten requests remained at least partially unfulfilled. The Chapters declined

⁹ The § 220 Action, filed under seal, was captioned *The ALS Association, Golden West Chapter, Inc., et al. v. The Amyotrophic Lateral Sclerosis Association, C.A.* No. 2022-1033-PAF (Del. Ch. Nov. 16, 2022).

to withdraw the § 220 Action so long as their books and records request remained outstanding and the purported “suspensions” of the Chapters’ BOR representatives remained in effect. A copy of this letter is attached as Exhibit 35.

257. Pursuant to Court of Chancery Rule 5.1(e), the Chapters also notified National that, should it wish to make any redactions to the public version of the complaint in the § 220 Action, it must do so by 3:00 PM on Monday, November 21. A copy of the Notice of Confidential Filing is attached as Exhibit 36.

258. Instead, on the evening of Sunday, November 20, counsel for National wrote once more to counsel for the Chapters. Noting that “the public may respond adversely” to open litigation between National and the Chapters, National offered to “lift the suspensions and reinstate the suspended individuals immediately after [the Chapters] withdraw the Complaint” in the § 220 Action. This email correspondence is attached as Exhibit 37.

259. Ultimately, the Chapters agreed to discontinue the § 220 Action without prejudice in exchange for (1) the immediate lifting of the purported “suspensions” and reinstatement of the Chapters’ BOR and committee members; (2) National’s agreement not to “suspend” any Chapter volunteer in the future; (3) National’s agreement to produce additional non-suspension related documents, especially those related to finances and management of merged chapters; and (4)

National's agreement to allow "suspended" Governance Committee members to propose additional candidates to the official BOT nomination slate.

260. Accordingly, the Chapters filed a notice of voluntary dismissal without prejudice, pursuant to Chancery Court Rule 41(a)(1), on November 21, 2022.

261. National and the Chapters did not enter into a formal settlement agreement. Neither side agreed to keep the terms of the resolution confidential.

c. National's Continued Governance Abuses

262. Seeking to build on the momentum from the resolution of the § 220 Action, and hoping that the § 220 Action had sufficiently demonstrated the Chapters' resolve, the Chapters made a good-faith push in the ensuing weeks to hammer out a comprehensive settlement with National: either a contractual affiliate status that would allow the Chapters to continue operating under The ALS Association umbrella, or an amicable divorce that would allow the Chapters to retain control of their assets as independent corporations.

263. To name one example, on November 22, 2022, the Chapters sent a letter to National proposing one or two days of in-person discussion between a delegation from the Chapters and the full BOT in January 2023 to seek a negotiated resolution of the Chapters' dispute with National. This outreach was ignored.

264. Instead, in the first week of 2023, Governance Committee chair [REDACTED] [REDACTED] sent out congratulatory emails (the "[REDACTED] Email") informing certain

persons that they had been selected (from a group of 12 candidates) for membership on the BOT, “with a likely effective date of May 1, 2023.” One such email is attached as Exhibit 38.

265. This was alarming since, as representatives of the Chapters swiftly pointed out, the Governance Committee had not nominated a slate of candidates as required by the Bylaws. Indeed, the Governance Committee had not even met since September 7, 2022 because of National’s “suspensions” and the subsequent lack of a quorum. The [REDACTED] Email stated that the “Governance Committee [had been] fortunate to receive interest from 12 qualified candidates,” but assiduously avoided saying explicitly how the invitees had been chosen.

266. The other revelation in the [REDACTED] Email was even more distressing. Contrary to National’s previous plans, which had envisioned the final legal merger of the de-federated chapters to take place in early 2024, National unveiled its intention to fully effectuate the merger by May 1, 2023.

267. Specifically, the [REDACTED] Email states the invitation is to serve as a BOT member for the “merged, unified ALS Association,” and that “[o]ver the next several weeks, the Board of Trustees and each chartered chapter, through its voting member, will vote to approve the Plan of Merger,” including new amended and restated bylaws and an amended and restated certificate of incorporation.

268. On the evening of January 9, 2023, National confirmed the revelations contained in the [REDACTED] Email. BOT Chair, Mr. Kauffman circulated an email to the BOT, National staff, and chapter leadership announcing the BOT had voted to approve a “Plan of Merger and Unification Policy.” All chapters would have 30 days to approve the Plan of Merger, with an expected effective date of May 1, 2023. A true and correct copy of Mr. Kauffman’s January 9, 2023 email is attached hereto as Exhibit 39.

269. Importantly, section 2.01 of the Plan of Merger requires each chapter to represent and warrant its representative to the BOR shall vote in favor of the merger, or the chapter must remove and replace the BOR voting representative with a National puppet.

270. National’s supposed new certificate of incorporation and bylaws, which were not considered or proposed by the Governance Committee, underscore chapter elimination.

271. On January 10, 2023, National CEO, Calaneet Balas, wrote to the BOT, National staff, and chapter leadership. She stated “[i]n the event a chapter does not choose to merge, over the following 30 days, we will begin to set up services, protect relationships, and begin the process of separation.” A true and correct copy of Ms. Balas’s January 10, 2023 email is attached hereto as Exhibit 40.

272. Ms. Balas’s email, which attached National’s purportedly amended and restated bylaws, certificate of incorporation, merger plan and other documents, was followed by another from Ms. Zeff, who made clear that National is manufacturing a basis for member elimination as an end-run around statutory and contractual obligations. In relevant part, Ms. Zeff’s January 11, 2023 email states:

In the event that your Chapter chooses not to pursue unification or does not sign the Written Consent on or before February 10, 2023, then the Chapter will be out of compliance with an ALS Association Policy as adopted by the Board of Trustees on January 9, 2023, that states:

If a Chapter does not sign the Written Consent on or before February 10, 2023, then the Board of Trustees or the Executive Committee will confirm that the Chapter is a non-consenting Chapter and the non-consenting Chapter will be noticed that it is not in compliance with its Charter Agreement, pursuant to Section 4.2 of the Charter Agreement, and management will commence the process of terminating the non-consenting Chapter’s membership in the ALS Association, and revoking the non-consenting Chapter’s Charter Agreement.

273. Worse, Ms. Zeff expressly threatened Chapter board members, all of whom are volunteers, by promising that National would initiate suit against them in their individual capacities if they refused to vote in favor of merger. And, in a call with Dave Shore, the North Carolina Chapter’s Executive Director, Ms. Zeff admitted National withheld information from the Chapter in the past because “I didn’t like [your predecessor].” To disable the Chapter, Ms. Zeff even tried to entice

Mr. Shore to leave his position in favor of a “regional manager” position with National.

F. National Has Left the Chapters No Choice But to Litigate

274. While National has offered the Chapters an unending series of “discussions,” it has steadfastly refused to budge on a single prerequisite—Chapter independence.

275. Without a guarantee that the Chapters will be secure in their separate corporate existence, the Chapters would have no ability to enforce—and therefore no reason to trust—any promises or representations National makes about maintaining care services quality, local relationships, and local control. The Chapters will no longer exist.

276. Legally, this case is straightforward. The Chapters are independent corporations in a contractual relationship with National. National does not own them. They are not subsidiaries or divisions of National. National cannot liquidate them against their will.

277. Having embarked on a heedless attempt to do just that with the July 9 Vote, National has, for the past year-and-a-half, followed a gameplan: make life so intolerable for the Chapters they turn in their CCAs, or National will write whatever rules it must to unilaterally extinguish them.

278. Either way, National believes it is entitled to help itself to tens of

millions of dollars of the Chapters' assets to shore up its own lackluster finances.

279. The leadership of the Chapters would violate the fiduciary duties owed to their separate organizations, their legal obligations to honor donor intent, and the moral duties owed to the ALS community they serve, by allowing the Chapters to be absorbed into National under these circumstances.

280. At this point, the Chapters cannot stop National from sinking The ALS Association. The Chapters will not, however, allow National to loot them on its way down.

V. CLAIMS

Claim I — Specific Performance

281. The foregoing paragraphs 1–280 are incorporated by reference as if fully restated herein.

282. National is party to a binding contract, the CCA, with each of the Chapters.

283. As described above, Section 5.4 of the CCAs provides “[n]either The Association nor the Chapter shall take, or omit to take, any action which will impair the right, power, authority and capacity of The Association or the Chapter to effectuate any other rights under this Charter.”

284. As described above, National has engaged in repeated breaches of the CCA since the July 9 Vote: its purported “suspensions” of Chapter representatives,

flagrant disregard for the role of the Chapter representatives on the Governance Committee and BOR in nominating and electing new BOT members, poaching of Chapter staff, competing with the Chapters for donations, and others.

285. National has effectively ceased performing under the CCA, and confirmed its intention not to do so in any respect as soon as May 1, 2023.

286. By contrast, at all relevant times, the Chapters have performed their obligations under the CCA, including the remittance of the 13.6 percent revenue share payment to National, and would continue to do so if not for National's plan to force de-federation.

287. The Chapters have no adequate remedy at law.

288. To remedy National's breaches and prevent National from following through with its stated intention to stop performing under the CCA, the Chapters seek the actual and consequential damages they have suffered, reasonable attorney's fees and costs, and a preliminary and permanent injunction from this Court enjoining National from taking any steps to disaffiliate the Chapters, unless and until such time as each binding CCA is orderly terminated according to its terms (under which National's pretextual adoption of a purported policy demanding agreement to de-federate does not qualify).

Claim II — Repudiation of Contract

289. The foregoing paragraphs 1–288 are incorporated by reference as if fully restated herein.

290. National is party to a binding contract, the CCA, with each of the Chapters.

291. As described above, National has repudiated the Chapters' CCAs by refusing to perform its obligations to the Chapters, and significantly and substantially altering both the present and anticipated future relations created by the CCAs.

292. National has not, at any time, retracted its repudiation, but has instead confirmed its intent to stop performing any contractual obligations as soon as May 1, 2023.

293. To remedy National's repudiation, the Chapters seek the specific performance requested in Claim I above, a declaration they are entitled to retain all their assets, the actual and consequential damages they have suffered, and reasonable attorneys' fees and costs.

294. The Chapters have no adequate remedy at law.

Claim III — Breach of Contract

295. The foregoing paragraphs 1–294 are incorporated by reference as if fully restated herein.

296. National is party to a binding contract, the CCA, with each of the Chapters.

297. As described above, Section 5.4 of the CCAs provides “[n]either The Association nor the Chapter shall take, or omit to take, any action which will impair the right, power, authority and capacity of The Association or the Chapter to effectuate any other rights under this Charter.”

298. Separate from National’s repudiation of the CCAs, it illegally purported to “suspend” certain volunteers of Chapters from the BOR and committees, an *ultra vires* act without foundation in the CCAs or the National Bylaws, for pretextual reasons and for the purpose of depriving the Chapters of their rightful representation within The ALS Association.

299. In the wake of those “suspensions,” National purported to appoint members to a new BOT for the de-federated Association effective May 1, 2023, performing a complete end-run around the role of the Governance Committee in selecting a BOT slate, as well as the role of the BOR in electing new BOT members.

300. National’s actions constitute a separate and independent breach of the Chapter Charter Agreements, for which the Chapters seek the actual and consequential damages they have suffered, reasonable attorneys’ fees and costs, and the specific performance requested in Claim I above.

301. The Chapters have no adequate remedy at law.

Claim IV — Breach of Contract

302. The foregoing paragraphs 1–301 are incorporated by reference as if fully restated herein.

303. National is party to a binding contract, the CCA, with each of the Chapters.

304. As described above, Section 5.4 of the CCAs provides “[n]either The Association nor the Chapter shall take, or omit to take, any action which will impair the right, power, authority and capacity of The Association or the Chapter to effectuate any other rights under this Charter.”

305. Separate from National’s repudiation of the CCAs, it has engaged in an ongoing campaign to harm the Chapters by poaching their staff, undermining the Chapters’ ability to perform normal operations and carry out their mission of service to persons living with ALS.

306. National’s actions constitute a separate and independent breach of the Chapter Charter Agreements, for which the Chapters seek the actual and consequential damages they have suffered, reasonable attorneys’ fees and costs, and the specific performance requested in Claim I above.

307. The Chapters have no adequate remedy at law.

Claim V — Breach of Contract

308. The foregoing paragraphs 1–307 are incorporated by reference as if fully restated herein.

309. National is party to a binding contract, the CCA, with each of the Chapters.

310. Section 5.4 of the CCAs provides “[n]either The Association nor the Chapter shall take, or omit to take, any action which will impair the right, power, authority and capacity of The Association or the Chapter to effectuate any other rights under this Charter.”

311. Separate from National’s repudiation of the CCAs, National has competed within the Chapters’ assigned territories, in a manner designed to deceive donors as to the recipient of their donations, among other things. By competing with the Chapters in this fashion, National is undermining their ability to engage in normal operations and carry out their mission of service to persons living with ALS.

312. National’s actions constitute a separate and independent breach of the Chapter Charter Agreements, for which the Chapters seek the actual and consequential damages they have suffered, reasonable attorneys’ fees and costs, and the specific performance requested in Claim I above.

313. The Chapters have no adequate remedy at law.

Claim VI — Breach of Contract

314. The foregoing paragraphs 1–313 are incorporated by reference as if fully restated herein.

315. Section 3.2.2 of each CCA provides National shall “seek opportunities to maximize purchasing power and economies of scale for the entire Association and chapter network and will provide support to the Chapter to maximize its resources.”

316. Separate from National’s repudiation of the CCAs, it has failed to seek or create, let alone maximize, synergies and opportunities of scale for the Chapters.

317. National’s failures in this regard constitute a separate and independent breach of the Chapter Charter Agreements, for which the Chapters seek the actual and consequential damages they have suffered, reasonable attorneys’ fees and costs, and the specific performance requested in Claim I above.

318. The Chapters have no adequate remedy at law.

Claim VII — Breach of the Duty of Good Faith and Fair Dealing

319. The foregoing paragraphs 1–318 are incorporated by reference as if fully restated herein.

320. Like every other contract under Delaware law, an implied duty of good faith and fair dealing attaches to National’s performance of its CCA with each Chapter.

321. The Chapters have scrupulously sought to uphold their obligations

under the CCAs, including the payment of the usual 13.6 percent revenue share allocation to National.

322. In return, since the July 9 Vote, National has threatened the Chapters, deprived the Chapters of customary services, hired away Chapter staff, and competed with the Chapters.

323. National has also engaged the Chapters in an endless process of fruitless negotiation, alternating repeated invitations for free-form “dialogue” with long stretches of silence and ignored Chapter proposals.

324. National has thereby breached its inherent duty of good faith and fair dealing in its performance of the CCAs. In particular, each of the CCAs is subject to an implied term that National will act in good faith to promote and effectuate the shared mission of National and the Chapters, and not to impair any Chapter’s ability to do the same within the federated structure promised by the CCAs.

325. National’s actions constitute a separate and independent cause of action, for which the Chapters seek the actual and consequential damages they have suffered, reasonable attorneys’ fees and costs, and the specific performance requested in Claim I above.

326. The Chapters have no adequate remedy at law.

Claim VIII — Declaratory Judgment

327. The foregoing paragraphs 1–326 are incorporated by reference as if

fully restated herein.

328. In addition to the above contractual claims, and in the alternative, the Chapters seek a declaratory judgment that:

- National has unilaterally repudiated and/or materially breached its Chapter Charter Agreement with each Chapter; and
- National has no legal claim to the Chapters' assets and reserves, which the Chapters are entitled to retain in their entirety.

**Claim IX—Inequitable Manipulation of National's
Corporate Governance Machinery**

329. The foregoing paragraphs 1–328 are incorporated by reference as if fully restated herein.

330. By threatening to terminate the memberships and CCAs of any Chapter that does not cause its Representative to sign a written consent approving the mergers, and to strip the non-consenting Chapters of their assets, National is attempting to coerce the Chapters to vote in favor of the mergers without regard to the merits, or lack thereof, of the mergers and the de-federation plan.

331. National's attempt to coerce the Chapters' consents is contrary to the governance scheme established by National's Certificate of Incorporation, Bylaws, and the CCAs, in which the votes of the Chapters are central to, and drive the

structure of, National's corporate governance machinery.

332. National's attempt to coerce the Chapters' consent to the mergers constitutes inequitable manipulation of its corporate governance machinery and actionable coercion under established principles of Delaware corporate law.

333. National's coercion of each of the Chapters' votes constitutes irreparable harm not only to the individually coerced Chapter, but also to every other Chapter, each of which has a right to participate in the system of membership suffrage envisioned by National's Certificate of Incorporation, Bylaws, and the CCAs, secure in the knowledge that the votes of its fellow chapters will be based on the merits of the proposed action, viewed in light of the shared mission of all of them.

334. National's attempted coercion of the Chapters should be enjoined, as there is no adequate remedy at law for such inequitable conduct, and any votes or consents obtained through such coercion should be adjudged void and of no force or effect.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs The ALS Association Arizona Chapter; The ALS Association, Golden West Chapter, Inc.; The ALS Association, Orange County Chapter, Inc.; The ALS Association Rocky Mountain Chapter; ALS Association, Connecticut Chapter, Inc.; ALS Association of Georgia, Inc.; The ALS Association

Greater Chicago Chapter; ALS of Nevada; The ALS Association New Mexico Chapter; The Greater New York City Chapter of The ALS Association Inc.; The ALS Association North Carolina Chapter; The ALS Association Central & Southern Ohio Chapter, Inc.; The ALS Association Chapter of Oregon and Southwest Washington; and Greater Philadelphia Chapter, The Amyotrophic Lateral Sclerosis Association respectfully request that the Court enter judgment in their favor as laid out in each of their above claims. Plaintiffs further request an award of reasonable attorneys' fees and costs as provided by Section 5.2 of the Chapter Charter Agreements, and such other further or additional relief as the Court may find necessary, justified, or proper under the law and the circumstances of this case.

Dated: January 17, 2023

BALLARD SPAHR LLP

/s/ R. Michael Lindsey

R. Michael Lindsey (Del. No. 2711)

Brittany M. Giusini (Del. No. 6034)

919 North Market Street, 11th Floor

Wilmington, DE 19801-3034

Phone: (302) 252-4465

Fax: (302) 252-4466

lindseyrm@ballardspahr.com

Aliza R. Karetnick*

Timothy D. Katsiff*

Joseph J. Bailey*

Shawn F. Summers*

BALLARD SPAHR LLP

1735 Market Street, 51st Floor

Philadelphia, PA 19103

(215) 665-8500

karetnicka@ballardspahr.com

**pro hac vice* to be filed

Counsel for Plaintiffs The ALS Association Arizona Chapter; The ALS Association, Golden West Chapter, Inc.; The ALS Association, Orange County Chapter, Inc.; The ALS Association Rocky Mountain Chapter; ALS Association, Connecticut Chapter, Inc.; ALS Association of Georgia, Inc.; The ALS Association Greater Chicago Chapter; ALS of Nevada; The ALS Association New Mexico Chapter; The Greater New York City Chapter of The ALS Association Inc.; The ALS Association North Carolina Chapter; The ALS Association Central & Southern Ohio Chapter, Inc.; The ALS Association Chapter of Oregon and Southwest Washington; Greater Philadelphia Chapter, The Amyotrophic Lateral Sclerosis Association